



7020-02

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-890]

Certain Sleep-Disordered Breathing Treatment Systems And Components Thereof

Commission Determination Not to Review an Initial Determination Granting the Complainants' Motion to Amend the Complaint and Notice of Investigation to Substitute U.S. Patent No. Re44,453 For U.S. Patent No. 7,614,398 and Granting Respondents' Motion to Terminate the Investigation With Respect to U.S. Patent No. 7,614,398

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination ("ID") (Order No. 7) of the presiding administrative law judge granting the Complainants' motion to amend the complaint and notice of investigation to substitute claims 1-7 of U.S. Patent No. RE44,453 for claims 1-7 of U.S. Patent No. 7,614,398 ("the '398 patent") and granting the Respondents' motion to terminate the investigation with respect to the '398 patent.

FOR FURTHER INFORMATION CONTACT: James A. Worth, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 205-3065. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 205-2000. General information concerning the Commission may also be obtained by accessing its Internet server (<http://www.usitc.gov>). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at <http://edis.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205-1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on Friday, August 23, 2013, based on a complaint filed on July 19, 2013, on behalf of ResMed Corp. of San Diego, California; ResMed Inc. of San Diego, California; and ResMed Ltd. of Bella Vista, Australia (collectively, “ the Complainants”). 78 FR 52563-64 (August 23, 2013). The complaint alleged violations of Section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, in the sale for importation, importation, or sale within the United States after importation of certain sleep-disordered breathing treatment systems and components thereof by reason of infringement of one or more of claims 32–37, 53, 79, 80, and 88 of U.S. Patent No. 7,997,267; claims 1–7 of U.S. Patent No. 7,614,398; claim 1 of U.S. Patent No. 7,938,116; claims 30, 37, and 38 of U.S. Patent No. 7,341,060; claims 1, 3, 5, 11, 28, 30, 31, and 56 of U.S. Patent No. 8,312,883; claims 13, 15, 16, 26–28, 51, 52, and 55 of U.S. Patent No. 7,926,487; claims 1, 3, 6, 7, 9, 29, 32, 35, 40, 42, 45, 50, 51, 56, 59, 89, 92, 94, and 96 of U.S. Patent No. 7,178,527; and

claims 19–24, 26, 29–36, and 39–41 of U.S. Patent No. 7,950,392. The Commission’s notice of investigation named as respondents BMC Medical Co., Ltd. of Beijing, China; 3B Medical, Inc. of Lake Wales, Florida; and 3B Products, L.L.C. of Lake Wales, Florida (collective, “the Respondents”). A Commission investigative attorney (“IA”) is also participating in this investigation.

On December 13, 2013, the Commission issued notice of its determination not to review an ID (Order No. 4) granting the Complainants’ unopposed motion to amend the complaint to correct an error in its allegations regarding the domestic industry. 78 *FR* 76858-59 (December 19, 2013).

On December 5, 2013, the Complainants filed a motion to amend the complaint and notice of investigation by substituting claim 1-7 of U.S. Patent No. RE44,453 for claims 1-7 of the ‘398 patent. On December 9, 2013, the Respondents filed a response in opposition to Complainants’ motion to amend and separately filed a motion to terminate the investigation, or in the alternative, for summary determination, with respect to the ‘398 patent. On December 26, 2013, the Commission investigative attorney filed a response in support of the Respondents’ motion to terminate and in opposition to the Complainants’ motion to amend the complaint and notice of investigation. On December 26, 2013, the Complainants filed a response to the Respondents’ motion. On January 9, 2014, the ALJ issued an ID (Order No. 7), granting the motion to amend the complaint and notice of investigation and granting the Respondents’ motion to terminate the investigation with respect to the ‘398 patent. No petitions for review were filed.

Having considered the ID, the Commission has determined not to review the subject ID.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and § 210.42 of the Commission's Rules of Practice and Procedure (19 CFR 210.42).

By order of the Commission.

Issued: February 10, 2014.

Lisa R. Barton,

Acting Secretary to the Commission.